

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

EARL G. EDMONSON,

Plaintiff,

v.

//

**CIVIL ACTION NO. 1:11CV179
(Judge Keeley)**

JAMES SPENCER,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION

On November 14, 2011, the pro se petitioner, Earl G. Edmonson ("Edmonson"), filed a civil rights complaint pursuant to 42 U.S.C. § 1983, challenging the conditions of the Northern Regional Jail in Moundsville, West Virginia. The Court referred this matter to United States Magistrate Judge John S. Kaull for initial screening and a report and recommendation in accordance with LR PL P 2. On June 19, 2012, the defendant, James Spencer ("Spencer"), filed a motion to dismiss, arguing that Edmonson had failed to exhaust his administrative remedies and is thus precluded from bringing his claims. (Dkt. No. 35). Edmonson responded in opposition on July 6, 2012, alleging that the administrative remedy process was effectively unavailable to him due to the actions or inactions of employees of the Northern Regional Jail. (Dkt. No. 43). Spencer did not file a reply.

On November 26, 2012, Magistrate Judge Kaull issued an Opinion and Report and Recommendation ("R&R"), in which he recommended that

ORDER ADOPTING REPORT AND RECOMMENDATION

Spencer's motion to dismiss be denied. (Dkt. No. 48). The magistrate judge determined that Spencer had not met his burden of proof as to the affirmative defense of failure to exhaust. The parties did not file any objections.* Consequently, finding no clear error, the Court **ADOPTS** the Report and Recommendation in its entirety (dkt. no. 48); **DENIES** the defendant's motion to dismiss **WITHOUT PREJUDICE** (dkt. no. 35); and **ORDERS** the defendant to file an answer to the plaintiff's complaint within **twenty-one days** of the date of entry of this Order.

It is so **ORDERED**.

The Court directs the Clerk to transmit copies of this order to counsel of record and to the pro se petitioner, certified mail, return receipt requested.

Dated: January 17, 2013.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE

* The failure to object to the Report and Recommendation relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).